IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

S.B. CRIMINAL APPEAL NO.195/1988
(Raja @ Rajendra & Anr. Vs. The State of Raj.)

S.B. CRIMINAL APPEAL UNDER SECTION 374(2) Cr.P.C. AGAINST THE JUDGMENT DATED 3.5.88 PASSED BY THE LEARNED SESSIONS JUDGE, SRI GANGANAGAR IN SESSIONS CASE NO.29/87 – STATE OF RAJASTHAN VS RAJA @ RAJENDRA & ANR.

DATE OF JUDGMENT : 06th JULY, 2007

P R E S E N T

HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. Mridul Jain for the appellants.
Mr. V.R.Mehta, Public Prosecutor.

BY THE COURT :

This appeal is directed against the judgment and sentence dated 3.5.88 passed by the learned Sessions Judge, Sri Ganganagar, whereby, the accused appellant Raja @ Rajendra was convicted for offence under Section 325 IPC and sentenced to 5 years' rigorous imprisonment and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo six months' rigorous imprisonment. Accused appellant Baggu @ Bhagwandas was convicted for offence under Sections 325/34

read with Section 114 IPC and sentenced to 5 years' rigorous imprisonment and to pay a fine of Rs.1000/- in default of payment of fine to further undergo six months' rigorous imprisonment.

The charge against both the accused appellants was that on 26.3.1987, in the night at about 11.30 p.m., accused appellants with common intention to kill Subhash assembled and caused death of Subhash. Accused appellant Raja @ Rajendra was charged under Section 302 IPC and accused appellant Baggu @ Bhagwandas was charged under Section 302/34 read with Section 114 IPC. The prosecution examined 8 witnesses. The statements of accused appellants were recorded under Section 313 Cr.P.C. After hearing the arguments, the learned trial judge acquitted the accused appellants of offence under Section 302 IPC but convicted accused appellant Raja @ Rajendra of offence under Section 325 IPC and accused appellant Baggu @ Bhagwandas of offence under Section 325/34 IPC read with Section 114 IPC, on account of his being abettor and presence on the spot.

Learned counsel for the appellants submits that the case is 20 years old and the maximum punishment provided for offence under Section 325 IPC is seven years and in such cases the court

is bound to give benefit of probation to accused unless some reasons are assigned. Learned counsel further submits that both the accused appellants have already undergone for a period of more than one year and the incident took place on account of trivial matter and beatings were given spontaneously with legs and fists. Keeping in view the contention of the learned counsel, the ends of justice will meet if the accused appellants are sentenced to the period already undergone.

Learned public prosecutor has supported the judgment of the learned trial court.

Consequently, the appeal is allowed in part. While, maintaining the conviction of accused appellants Raja @ Rajendra and Baggu @ Bhagwandas under Section 325 and Section 325/34 read with Section 114 IPC respectively, their sentences are reduced to the period already undergone. However, the sentence of fine shall remains intact.

(DEO NARAYAN THANVI), J.

ms rathore